

REMARKS

Applicants have amended claim 42. Support for the amendment may be found in the specification at, for example, page 7, line 31 to page 8, line 5. Claims 22-42 remain pending and under examination.

In the Office Action, the Examiner:

- (1) rejected claim 42 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;
- (2) rejected claims 22-25 and 32-52 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent App. Pub. No. 2004/0111502 ("*Oates*"); and
- (3) rejected claims 26-31 under 35 U.S.C. § 103(a) as being unpatentable over *Oates* in view of non-patent literature document "Traffic Dimensioning for Multimedia Wireless Networks" ("*Leila*").

Applicants respectfully traverse the rejections for the following reasons.

Rejection of Claim 42 under 35 U.S.C. § 101:

In response, and without conceding to the Office Action's rejection, Applicant has amended claim 42 to recite "[a] non-transitory computer readable medium encoded with a program" The amendments overcome the 35 U.S.C. § 101 rejection and Applicant respectfully requests its withdrawal.

Rejection of Claims 22-25 and 32-52 under 35 U.S.C. § 102(e):

Applicant requests reconsideration and withdrawal of the rejection of claims 22-25 and 32-52 under 35 U.S.C. § 102(e) as being anticipated by *Oates*.

In order to establish anticipation under 35 U.S.C. § 102, the Office Action must show that each and every element as set forth in the claim is found, either expressly or inherently described, in *Oates*. See M.P.E.P. § 2131. *Oates*, however, does not disclose each and every element of

Applicant's claims. Specifically, *Oates* does not disclose at least the following features recited in claim 22 (and similarly in claim 36):

... simulating a second configuration of said mobile telephone network,

said first and second configurations of said mobile telephone network being statistically independent of each other,

...

processing jointly statistical results generated using each of said simulation configurations.

(Emphases added, claim 36 containing similar recitations.)

The Office Action alleged that *Oates*' network simulator 207 operating on traffic profile 201_{3,207} discloses the claimed "simulating a first configuration of said mobile telephone network;" and *Oates*' network simulator 211 operating on traffic profile 211_{2,211} discloses the claimed "simulating a second configuration of said mobile telephone network." See Office Action, page 3. This is incorrect.

Oates' network simulators 207 and 211 do not simulate the same network. For example, *Oates* discloses that "[t]he present invention relates to [an] apparatus for adapting the distribution of network events between two or more networks." *Oates*, para. [0001] (emphasis added). *Oates* further discloses that "[i]n one embodiment, customers subscribe to two different networks, each of which provides a quantifiable level of service." *Oates*, para. [0024] (emphasis added). That is, the two network simulators (207 and 211) disclosed by *Oates* simulate two different networks. This is fundamentally different from Applicants' claim 22, which recites "simulating a first/[second] configuration of said mobile telephone network" (emphasis added, claim 36 containing similar recitations).

The Office Action also alleged that because traffic profiles 201_{3,207} and 201_{3,211} are likely to be different, they disclose the claimed "first and second configurations of said mobile

telephone network being statistically independent of each other.” See Office Action, page 3. This allegation is also incorrect. Accordingly to *Oates*, traffic profile 201_{3,207} is a “modified traffic profile” modified from 201_{2,207}, and the modification “is dependent on the respective “customer satisfaction.” *Oates*, para. [0034]. The “customer satisfaction” is in turn determined by combining QoS value (generated by estimator 213 by processing simulation results from simulator 207 based on traffic profile 201_{2,207}) and customer profiles (of the first network corresponding to simulator 207). See *Oates*, paras. [0031-0034]. Therefore, modified traffic profile 201_{3,207} is clearly dependent from 201_{2,207}. Similarly, modified traffic profile 201_{3,211} is dependent from 201_{2,211}.

Further, *Oates* discloses that traffic profile 201_{2,211} can be identical to 201_{2,207}. See *Oates*, para. [0031]. This is also clear from Fig. 2 of *Oates*, where Traffic Profile 201_{(i+1)j} is fed to both simulators 207 and 211. Therefore, although traffic profiles 201_{3,207} and 201_{3,211} are likely to be different, the difference is due to, for example, different customer profiles in the two different networks. See *Oates*, para. [0077]. However, these two profiles are not statistically independent, at least because they are generated from the same traffic profile.

The Office Action alleged that step S5.4 in Fig. 5 of *Oates* discloses the claimed “processing jointly statistical results generated using each of said simulation configurations.” See Office Action, page 4. This is incorrect. As discussed above, *Oates* discloses a method of simulating two different networks using two separate simulators. See *Oates*, paras. [0001] and [0024]. Therefore, estimator 213 determines QoS values “for each of the network simulators 207, 211.” *Oates*, para. [0032] (emphasis added). Nowhere does *Oates* disclose that the QoS is determined by combining simulation results of both simulators. On the other hand, during the generation of each QoS, only one iteration of simulation is involved. See Fig. 5, in which S5.4 is a single step in the loop consisting of S5.2-S5.5. Therefore, each time a new QoS is estimated,

the input record used by estimator 213 is updated and there is no way of combining two separate results generated by a single simulator. Thus, *Oates*' system cannot "process[] jointly statistical results generated using each of said simulation configurations [of said mobile telephone network]," as recited in claim 22 (and similarly in claim 36).

Since *Oates* does not disclose each and every element of independent claim 22, *Oates* does not anticipate claim 22 under 35 U.S.C. § 102(e). Therefore, independent claim 22 should be allowable over *Oates*. Independent claim 36, while of different scope, contains similar features as independent claim 22, and should also be allowable for at least the same reasons as independent claim 22. In addition, dependent claims 23-25, 32-35, and 37-52 should also be allowable at least by virtue of their respective dependence from independent claim 22 or 36, and because they recite additional features not disclosed in *Oates*. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(e) rejection.

Rejection of Claims 26-31 under 35 U.S.C. § 103(a):

Applicants request reconsideration and withdrawal of the rejection of claims 26-31 under 35 U.S.C. § 103(a) as being unpatentable over *Oates* in view of *Leila*.

Specifically, *Oates* and *Leila*, taken either alone or in combination, do not teach or suggest the following elements recited in claim 22 (and similarly in claim 36):

... simulating a second configuration of said mobile telephone network,
said first and second configurations of said mobile telephone network being statistically independent of each other,
...
processing jointly statistical results generated using each of said simulation configurations.

(Emphases added, claim 36 containing similar recitations.)

As discussed above, Applicants have established that *Oates* fails to disclose the above-quoted features of claim 22 (and similarly claim 36).

Leila does not cure the deficiencies of *Oates*. In fact, the Examiner also admitted that *Leila* does not teach the above-quoted features in the Final Office Action of June 29, 2010. *See* 06/29/2010 Final Office Action, page 3. Thus, independent claims 22 and 36 are nonobvious and should therefore be allowable over *Oates* and *Leila*. Therefore, dependent claims 26-31 should be allowable at least by virtue of their respective dependence from base claim 22 or 36, and because they recite additional features not taught or suggested by the applied references. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection.

Conclusion:

Applicants request reconsideration of the application and withdrawal of the rejection. Pending claims 22-42 are in condition for allowance, and Applicants request a favorable action.

The Office Action contains a number of statements reflecting characterizations of the cited art and related claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any such statements or characterizations in the Office Action.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

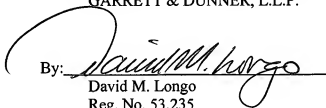
Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: February 7, 2011

By:

A handwritten signature in black ink, appearing to read "David M. Longo", is written over a horizontal line. The signature is fluid and cursive.

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